Manitoba

Annual Report 2000

Office of the Commissioner Law Enforcement Review Agency (LERA)

Includes 10% post-consumer waste

MINISTER OF JUSTICE
ATTORNEY GENERAL

Room 104
Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

His Honour
The Honourable Peter Liba
Lieutenant Governor of Manitoba

May It Please Your Honour:

It is my pleasure to present the 2000 Annual Report of the Law Enforcement Review Agency.

This report details the Agency's accomplishments and activities for the twelve-month period from January 1, 2000 to December 31, 2000.

I trust this meets with your approval.

Yours truly,

Gord Mackintosh
Minister of Justice
Attorney General

2001
International Year of Volunteers

102-00080/

Manitoba

Justice

Law Enforcement Review Agency

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The Honourable Gord Mackintosh
Minister of Justice
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Dear Minister:

I am pleased to submit my report for the period January 1, 2000 to December 31, 2000 in accordance with Section 45 of ***The Law Enforcement Review Act***.

Yours sincerely,

S. C. Wright

George V. Wright
Commissioner

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LERA's Mission Statement

The mission of the Law Enforcement Review Agency (LERA) is to deliver a judicious, timely, impartial, client-oriented service to the public and to the police services and police officers within it jurisdiction.

About LERA

What is LERA?

The Law Enforcement Review Agency (LERA) is an independent, non-police agency established under *The Law Enforcement Review Act* in 1985 to investigate public complaints about police.

LERA deals only with complaints about municipal police performance arising out of the execution of duties. It does not investigate criminal matters. Criminal matters are referred to the Crown Attorney's office.

LERA is staffed by a Commissioner, a registrar and professional investigators.

To whom does the Act apply?

The Act applies to any peace officer employed by a municipal police department in Manitoba, including police chiefs. It does not apply to members of the RCMP.

Complaints about members of the RCMP should be directed to the Commission for Public Complaints against the RCMP, at www.cpc-cpp.gc.ca or by calling toll-free 1-800-665-6878. Complaints about RCMP members received by LERA will be forwarded.

What does LERA investigate?

LERA investigates a citizen's allegation that a municipal police officer has committed any of the following disciplinary defaults:

- abuse of authority, including:
  - making an arrest without reasonable or probable grounds
  - using unnecessary violence or excessive force
  - using oppressive or abusive conduct or language
  - being discourteous or uncivil
  - seeking improper monetary or personal advantage
  - serving or executing documents in a civil process without authorization

- discriminating on the basis of race, nationality, religion, colour, sex, marital status, physical or mental handicap, age, source of income, family status, political belief, or ethnic or national origin

- making a false statement, or destroying, concealing or altering any official document or record
- improperly disclosing any information acquired as a member of the police department
- failing to exercise discretion or restraint in the use and care of firearms
- damaging property or failing to report the damage
- failing to assist where there is a clear danger to the safety of a person or property
- violating the privacy of any person within the meaning of *The Privacy Act*
- contravening any part of *The Law Enforcement Review Act* that does not specify a penalty for the violation
- assisting, counselling or causing any person to commit a disciplinary default

Who may complain?

Any person who feels wronged by the conduct or actions of a municipal police officer in Manitoba, may file a complaint.

A complaint, may also be filed on behalf of another person. LERA must obtain consent from that person before acting on the complaint.

How is a complaint filed?

A complaint must be made in writing and signed. Date, time, location and other details are important. LERA staff or members of the local police service will help prepare a complaint if asked.

A written complaint may be submitted directly to LERA, a police chief or any member of a municipal police department. Police will forward a complaint to LERA.

Are there time limits?

The Act requires a complaint to be submitted within 30 days of the incident. The Commissioner may extend that limit if there are valid reasons for being unable to submit the complaint on time.

The Commissioner may also extend the 30-day filing limit to avoid conflict with court proceedings or ongoing criminal investigations involving a complaint.

How is a complaint investigated?

LERA has professional investigators who interview witnesses, take statements and review reports such as official police records and medical reports. LERA investigators conduct all inquiries they feel are necessary to uncover relevant evidence.

LERA may be contacted at any time to inquire about the status of a complaint. The Commissioner remains open to discussion with all parties before making a final determination.

Preliminary screening of complaint

After the investigation, the Commissioner will screen the complaint to determine whether there is a reason to take no further action on it. The Act requires the Commissioner to do this. A decision will be made by the Commissioner to take no further action if any one of the following situations arise:

- the alleged conduct does not fall within the scope of any disciplinary default
- the complaint is frivolous or vexatious
- the complaint has been abandoned by the complainant
- there is not enough evidence to justify referring the complaint to a provincial judge for a public hearing

If the Commissioner decides to close the matter and take no further action, the complainant will be notified in writing. The complainant will then have 30 days from the date of the decision to ask the Commissioner to refer the matter to a provincial judge for review. Reviews are arranged by LERA at no cost to the complainant.

Does a complainant need a lawyer?

A complainant does not require a lawyer when dealing with LERA, but the complainant and the police officer must arrange for such service. Complainant and police must arrange for such services themselves. If a complainant applies for legal aid and is declined, the complainant can, in exceptional circumstances, make a request for the Minister of Justice to appoint a lawyer to represent him/her at a hearing.

Respondent police officers are generally provided representation by a lawyer under their employment contracts.

How are complaints resolved?

The Act provides several ways to resolve complaints.

Informal Resolution:

The Commissioner must try to resolve the complaint through informal mediation. Both the complainant and the respondent officer must agree to this process before it can take place. If the complaint is resolved informally to the satisfaction of both the complainant and the respondent police officer, no further action is taken and no record of the incident is made on the officer's service record.

Admission of Disciplinary Default:

A respondent police officer can admit to the alleged disciplinary default. The Commissioner then reviews the officer's service record and consults with the police chief before imposing a penalty.

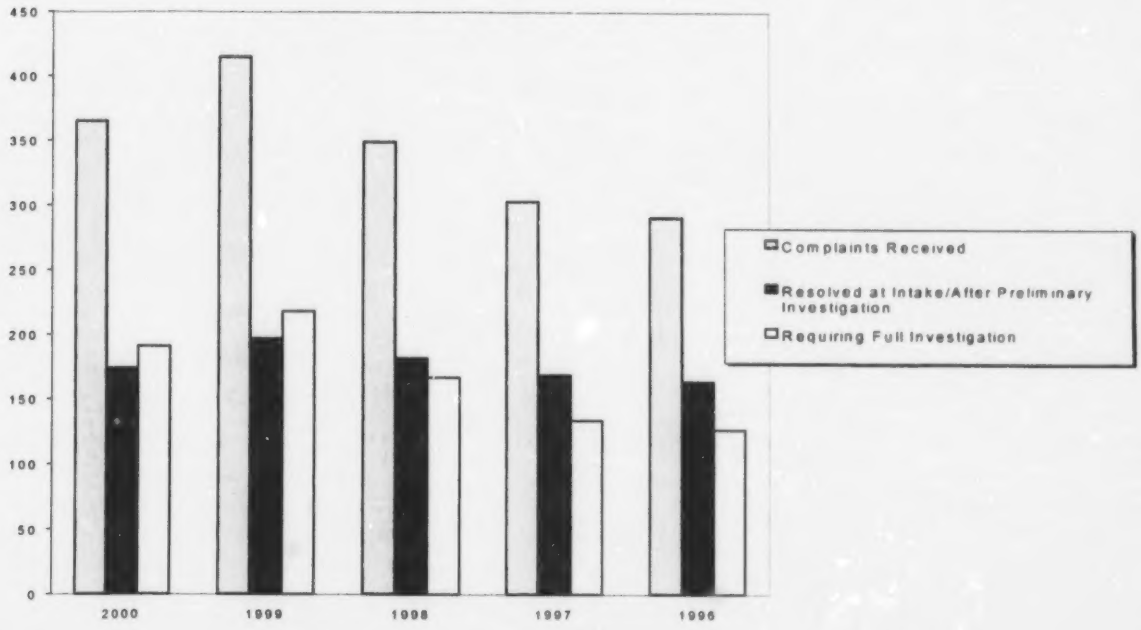
Referral to Judge for Hearing:

If a complaint cannot be resolved informally and there is no admission of disciplinary default, the Commissioner must refer the complaint to a provincial judge for disposition at a public hearing. Penalties that may be imposed by the provincial judge on the respondent officer(s) as noted in *The Law Enforcement Review Act* are:

- dismissal
- permission to resign, or summary dismissal if the resignation is not received within seven days
- reduction in rank
- suspension without pay for up to 30 days
- loss of pay for up to 10 days
- loss of leave or days off for up to 10 days
- a written reprimand
- a verbal reprimand
- an admonition

2000 Statistical Report -- Data Tables

Table 1: Public Complaints	**2000**	**1999**	**1998**	**1997**	**1996**
Complaints received	365	415	349	303	291
Resolved at intake/after preliminary investigation	174 (48%)	197 (47%)	182 (52%)	169 (56%)	164 (56%)
Requiring full investigation	191 (52%)	218 (53%)	167 (48%)	134 (44%)	127 (44%)



Increase in Complaints

Table 2: Investigations Conducted	2000	1999	1998	1997	1996
Total investigations	356	375	370	185	217
Investigations completed – files closed	141 (39%)	191 (51%)	220 (59%)	59 (32%)	103 (48%)
Ongoing investigations carried over as of December 31, 2000	215 (61%)	184 (49%)	150 (41%)	126 (68%)	114 (52%)

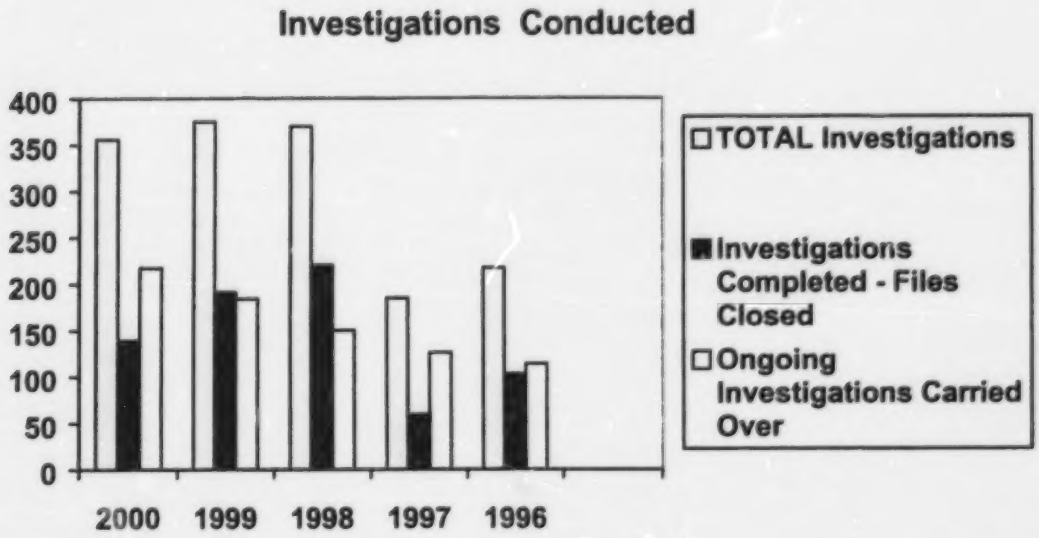


Table 3: Time Span of Ongoing Investigations Carried Over as of December 31, 2000							
Year	**1 - 3 Months**	**4 – 7 Months**	**8 – 12 Months**	**13 – 18 Months**	**19 – 23 Months**	**24 + Months**	**Total**
1997						1	1
1998						7	7
1999			1	24	13		38
2000	70	50	49				169
Total	**70**	**50**	**50**	**24**	**13**	**8**	**215**

Table 4: Files Concluded in 2000 by Year of Origin		
Year	**Number of Files**	**Average Time to Close Investigation**
1996	1	47 Months
1997	1	27 Months
1998	14	20 Months
1999	103	11 Months
2000	22	6 Months
Total	141	11 Months

Table 5: Length of Time to Complete Investigations	2000 (n=141)	1999 (n=191)	1998 (n=220)	1997 (n=59)	1996 (n=102)
1-3 Months	12 (9%)	19 (10%)	9 (4%)	6 (10%)	5 (5%)
4-7 Months	44 (32%)	71 (37%)	38 (17%)	4 (7%)	14 (14%)
8-12 Months	48 (34%)	54 (28%)	60 (27%)	14 (24%)	36 (35%)
13-18 Months	27 (19%)	25 (13%)	52 (24%)	26 (44%)	37 (36%)
19-23 Months	5 (3%)	7 (4%)	39 (18%)	6 (10%)	8 (8%)
24+ Months	5 (3%)	15 (8%)	22 (10%)	3 (5%)	2 (2%)
Average	11 Months	10 Months	14 Months	14 Months	12 Months

Average Number of Months to Complete Investigation

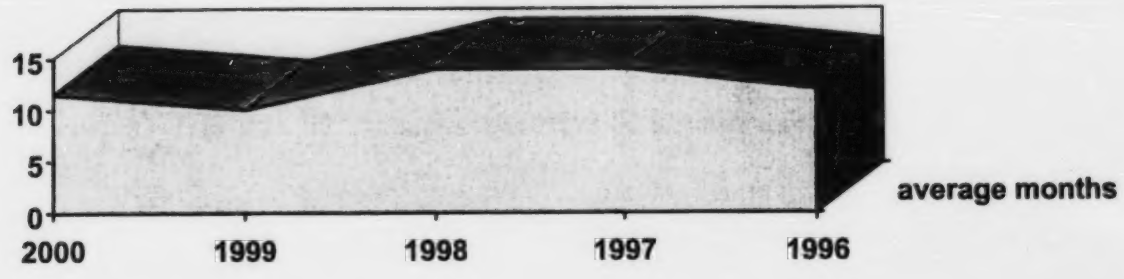


Table 6: Complainant Demographics	2000 (n=191)	1999 (n=218)	1998 (n=167)	1997 (n=134)	1996 (n=127)
Sex					
Male	133(70%)	143(66%)	109(65%)	104(78%)	99(78%)
Female	58(30%)	75(34%)	58(35%)	30(22%)	28(22%)
Age					
Over 50	25(13%)	24(11%)	19(11%)	13(10%)	11(9%)
40 – 49	53(28%)	42(19%)	3622%)	21(15%)	15(12%)
30 – 39	38(20%)	55(25%)	44(26%)	33(25%)	35(27%)
18 – 29	55(29%)	52(24%)	41(25%)	35(26%)	44(35%)
Youths under 18	8(4%)	13(6%)	12(7%)	13(10%)	10(8%)
Birth dates unknown	12(6%)	32(15%)	15(9%)	19(14%)	12(9%)

Table 7: Legal Involvement of Complainants	2000 (n=191)	1999 (n=218)	1998 (n=167)	1997 (n=134)	1996 (n=127)
No charges	68 (36%)	112 (51%)	66 (39%)	44 (33%)	46 (36%)
Traffic offences	15 (8%)	16 (7%)	20 (12%)	16 (12%)	16 (13%)
Property offences	15 (8%)	8 (4%)	4 (2%)	10 (7%)	12 (9%)
Intoxicated persons detention	9 (5%)	12 (6%)	8 (5%)	10 (7%)	13 (10%)
Cause disturbance	3 (2%)	1 (0.45%)	5 (3%)	5 (4%)	4 (3%)
Assault police officer/resist arrest	13 (7%)	6 (3%)	8 (5%)	7 (5%)	5 (4%)
Impaired driving	4 (2%)	6 (3%)	6 (4%)	9 (7%)	4 (3%)
Offences against another person	14 (7%)	16 (7%)	12 (7%)	8 (6%)	10 (8%)
Domestic disputes	12 (6%)	11 (5%)	6 (4%)	7 (5%)	7 (6%)
Other	38 (20%)	30 (14%)	32 (19%)	18 (14%)	10 (8%)

Table 8: Complainant's Allegations Discipline Code Section 29 The Law Enforcement Review Act	2000	1999	1998	1997	1996
Abuse of authority sec. 29(a)	60	94	40	16	5
Arrest without reasonable or probable grounds sec. 29(a)(i)	18	7	16	7	4
Using unnecessary or excessive force sec. 29(a)(ii)	77	77	80	63	70
Using oppressive or abusive conduct or language sec. 29(a)(iii)	59	84	53	52	94
Being discourteous or uncivil sec. 29 (a)(iv)	76	71	45	34	45
Seeking improper personal advantage sec. 29(a)(v)	0	1	0	0	4
Serving civil documents without proper authorization sec. 29(a)(vi)	2	0	2	0	0
Discrimination (age, race, sex, all types) sec. 29(a)(vii)	12	9	6	5	2
Making false statement(s) sec. 29(b)	3	7	1	1	3
Improperly disclosing information sec. 29(c)	4	8	2	4	0
Failing to exercise care or restraint in use of firearm sec. 29(d)	1	1	2	2	3
Damaging property or failing to report damage sec. 29(e)	3	3	3	2	4
Failing to provide assistance to person(s) in danger sec. 29(f)	7	3	2	2	8
Violating person's privacy (under *The Privacy Act*) sec. 29(g)	1	2	1	0	0
Contravening *The Law Enforcement Review Act* sec. 29(h)	0	0	0	0	0

Note: Complainants often allege more than one type of misconduct.

Table 9: Incidents Alleging Misuse of Pepper Spray			
2000 (n=1)	**1999 (n=4)**	**1998 (n=6)**	**1997 (n=5)**
.5% of 191 complaints investigated Winnipeg = 1	2% of 218 complaints investigated Winnipeg = 3 Brandon = 1	4% of 167 complaints investigated Winnipeg = 6	4% of 134 complaints investigated Winnipeg = 4 Brandon = 1

Table 10: Incidents Alleging Misuse of Handcuffs		
2000 (n=9)	**1999 (n=15)**	**1998 (n=12)**
5% of 191 complaints investigated Winnipeg = 9	7% of 218 complaints investigated Winnipeg = 13 Brandon = 2	7% of 167 complaints investigated Winnipeg = 6 Brandon = 2 Altona = 1

Table 11: Incidents Alleging Injuries from Use of Force			
2000 (n=50)	**1999 (n=56)**	**1998 (n=44)**	**1997 (n=40)**
26% of 191 complaints investigated Winnipeg = 47 Brandon = 3	26% of 218 complaints investigated Winnipeg = 52 Brandon = 4	26% of 167 complaints investigated Winnipeg = 39 Brandon = 5	30% of 134 complaints investigated Winnipeg = 36 Brandon = 4

Table 12: Location of Incident	2000 (n=191)	1999 (n=218)	1998 (n=167)	1997 (n=134)	1996 (n=127)
Street	58 (30%)	74 (34%)	63 (38%)	61 (46%)	44 (35%)
Private residence	59 (31%)	67 (31%)	56 (34%)	37 (28%)	44 (35%)
Public building/place	19 (10%)	24 (11%)	20 (12%)	18 (13%)	8 (6%)
Police station	30 (16%)	28 (13%)	20 (12%)	12 (9%)	26 (20%)
Other	25 (13%)	25 (11%)	8 (4%)	6 (4%)	5 (4%)

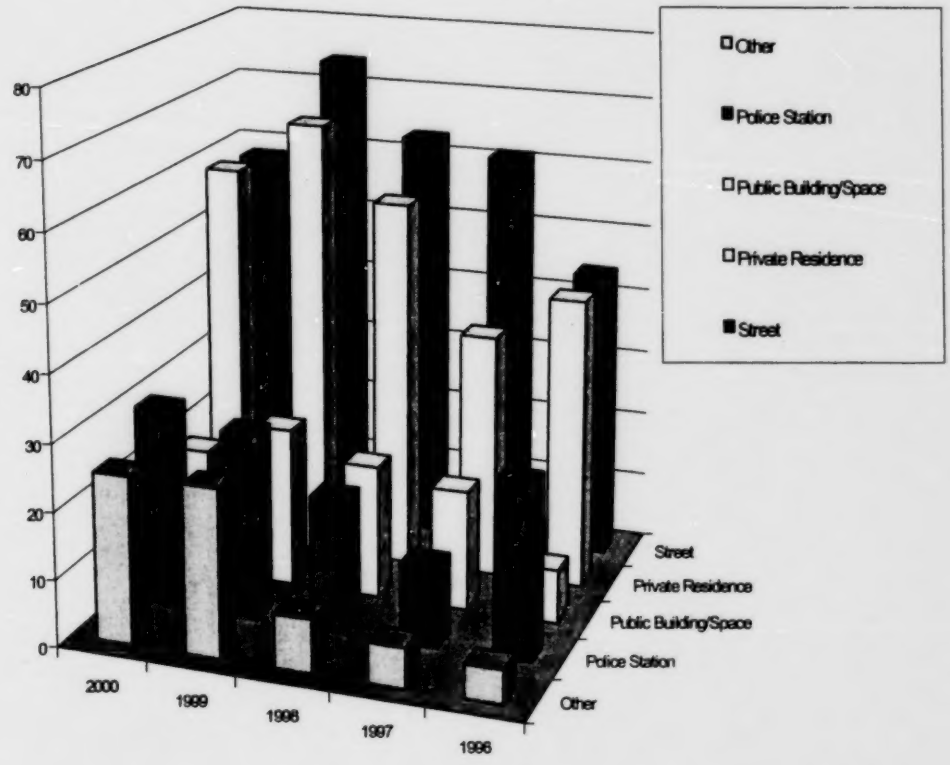


Table 13: Complaints by Police Service	Police Officers **	Population ***	2000 (n=191)	1999 (n=218)	1998 (n=167)	1997 (n=134)	1996 (n=127)
Altona	6	3,289	1 (0.5%)	0 (0%)	3 (2%)	0 (0%)	0 (0%)
Brandon	71	39,175	22 (12%)	24 (11%)	19 (11%)	17 (13%)	14 (11%)
RM East St. Paul	9	6,437	0 (0%)	0 0%)	0 (0%)	0 (0%)	2 (1.5%)
Morden	7	5,689	0 (0%)	1 (0.45%)	3 (2%)	0 (0%)	0 (0%)
Rivers	3	1,117	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (1%)
Gilbert Plains	1	748	1 (0.5%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Ste. Anne	3	1,511	1 (0.5%)	3 (1%)	0 (0%)	0 (0%)	2 (1.5%)
Winkler	9	7,241	0 (0%)	1 (0.45%)	1 (1%)	0 0%)	1 (1%)
Winnipeg	1179	618,477	165 (86%)	189 (87%)	141 (84%)	117 (87%)	107 (84%)
Dakota Ojibway	17	4,733	1 (0.5%)	0 (0%)			
*RM Cornwallis	1	4,279	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
*RM St. Clements	2	8,516	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
*RM Victoria Beach	3	227	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
*RM of Whitehead	1	1,535	0 (0%)	0 (0%)	0 (0%)		
Other			0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Total	1312	702,974	100%	100%	100%	100%	100%

*Supplementary Police Service - RCMP have primary responsibility
**Source: Municipal police services
***Source: Municipal Officials' 2000, Manitoba Intergovernmental Affairs

Table 14: Disposition of Complaints	**2000 (n=141)**	**1999 (n=191)**	**1998 (n=220)**	**1997 (n=59)**	**1996 (n=103)**
Dismissed by Commissioner as outside scope of Act	11 (8%)	24 (13%)	7 (3%)	1 (2%)	1 (1%)
Dismissed by Commissioner as frivolous or vexatious	1 (0.7%)	6 3(%)	61 (28%)	10 (16%)	15 (14%)
Dismissed by Commissioner as not supported by sufficient evidence to justify a hearing	42 (30%)	49 (26%)	72 (32%)	34 (57%)	46 (45%)
Abandoned or withdrawn by complainant	65 (47%)	79 (41%)	59 (27%)	8 (14%)	36 (35%)
Resolved informally	19 (12%)	22 (12%)	15 (7%)	1 (2%)	4 (4%)
Public hearing before a provincial court judge	3 (2%)	10 (5%)	6 (3%)	4 (7%)	1 (1%)
Admission of guilt by respondent officer	0 (0%)	1 (0.5%)	0 (0%)	1 (2%)	0 (0%)

Table 15: Reviews by Provincial Judge of Commissioner's Decision to Take No Further Action	2000	1999	1998	1997	1996
	5	13	10	5	3

Table 16: Referrals of Complaint to Crown for Criminal Investigation	2000	1999	1998	1997	1996
	1	2	3	1	1

Table 17: LERA Complaints Where Complainant Has Also Lodged a Criminal Complaint with Police	2000	1999	1998	1997
	22	11	N/A	N/A

Case Summaries

Informal Resolution of Complaints

Pursuant to section 15, the Commissioner makes available to the complainant and respondent a process that can potentially allow them to come to an informal resolution of the complaint. While this process is not always successful in resolving the matter, it often is. In order to be successful, the informal resolution process must be satisfactory to each of the parties involved in the complaint. To this end, there is no single model pursuant to which a complaint can be successfully resolved informally. Sometimes, it is sufficient that the police officer explain to the complainant the responsibilities of the police officer and the reason why it was necessary to take certain action. Other times, a complainant will seek an apology, and the police officer will be prepared to offer the apology. In some cases, the heart of the complainant's concern is damage that was caused to certain property, and the resolution involves a reimbursement for those damages.

The following are examples of complaints resolved informally in 2000:

- A youth was seen driving imprudently by an off-duty police officer. The officer happened to have a police car at his residence, so he decided to pursue the offender. He caught up to the youth at a store parking lot where the latter was driving in circles chasing a rabbit. There was a minor altercation when the youth refused to get out of his car. The youth alleged that the officer used excessive force and was verbally abusive to him during the altercation.

The complaint was informally resolved during a meeting with the complainant, his father and the arresting officer.

- A woman said she was driving when she saw two men about to start fighting in front of a hotel. When she returned a few minutes later, the two individuals were on the ground and the one on top was beating the other. The woman realized that the person being beaten was a woman and that her assailant was a man. She also saw several people watching the fight and doing nothing to stop it. She got out of her car and intervened. When police arrived, the man involved in the fight went to speak to an officer. She then went up to the officer to speak to him and to the man who had beaten the woman. She allegedly touched the officer on the epaulet so she could read his number. She said another officer suddenly grabbed her by the arm, swung her around, grabbed her throat and pushed her against a wall. She also said he yelled at her that she was drunk and should be taken to the drunk tank.

The police report showed that there were several people fighting at the time the officers arrived at the scene. The large crowd gathering at the site was becoming loud and boisterous. The woman did not just touch the officer but, rather, grabbed him by the arm, prompting the other officer to grab her by the wrist and pushed her away. This officer believed he smelled liquor on the woman's breath but later felt the odour could have come from others in the crowd.

The complaint was informally resolved during a meeting with the complainant and the arresting officers.

- Police were called to assist animal control officers and city health inspectors who were at an apartment to seize approximately 25 cats in poor health and close the apartment due to unsanitary conditions. Police attended to prevent a breach of the peace, since the tenant was known to be violent. The tenant was not present so the apartment complex owner let in the officers and inspectors. During the seizure of the cats, one animal control officer went outside to prevent a cat from escaping out the window. At this time, the tenant returned and physically attacked the animal control officer. When the police officer came out of the apartment to assist, the tenant attempted to brush past him and enter the apartment. After a brief struggle, the tenant was taken down to the ground and handcuffed. During the takedown, the tenant suffered a broken shoulder bone and his glasses were damaged.

The complaint was resolved informally during a meeting with the complainant and the arresting officer.

- A man was involved in a dispute with his ex-wife over access to his children. A court order governed times for him to receive the children and return them to his ex-wife. When he failed to return one child by the appointed time, his ex-wife complained to police, who then consulted with Crown counsel. A charge of abduction was approved and a warrant was issued. When police attempted to arrest the man, there was an altercation. The question arose about whether the arrest took place on the street or on his property. The officers allowed the man to enter his residence to call his lawyer. The man closed the door on the officers to prevent them from entering.

  The officer had advised the man that they would not allow him out of their sight while under arrest, and therefore forced their way in. After a short struggle, the man was allowed to make his phone call and change clothes before being brought to the police station. The man alleged that the police abused their authority by entering his residence and using excessive force in doing so.

The matter was resolved informally during a meeting with the complainant and the arresting officers.

- A man was standing on the sidewalk in front of a store giving out coupons for a business that had moved from that area to a new location. Two off-duty police officers told him to move his truck because it was illegally parked in front of the store. The man didn't believe the two were really police officers until one of them flashed a badge and told him again to move his truck or it would be towed. The man complied.

  After moving his truck, the man complained to the officers that he had been threatened by the storeowner. The officers refused to take his complaint and suggested that he report to the nearest service centre. One officer told the man that he should not harass people who were entering the store. The man felt the officers abused their authority by threatening to tow his truck and telling him not to harass people going into the store.

  Inside the store, the officers overheard customers complaining about the man being rude and obstructing them when he was handing out coupons. The officers decided to deal with the situation and went out to speak with the man. It was during this conversation that the man became rude and they discovered he was the owner of the truck parked illegally.

The matter was resolved informally during a meeting with the complainant and the arresting officers.

- A youth called police to report the theft of a VCR and Nintendo game. The investigating officer took the youth to a police car to speak privately because there were a number of other people in the house.

  The youth said the items had been in an upstairs bedroom. The officer found it strange that someone would go upstairs to steal items when other equally valuable items could be taken from the main floor. The officer left the youth in the car and went back to the house to speak to one of the other youths, who was less than co-operative. The officer returned to the car and told the complainant that one of the others in the house may have been responsible for the missing items. The youth took offence and felt the officer implied that he may have been involved. The youth felt the officer took this view on the basis of discrimination against him and his family.

This matter was resolved informally at a meeting with the complainant, his mother, a victim assistance worker, and the officer involved.

Reviews by Provincial Judge of Commissioner's Decision To Take No Further Action

The Commissioner usually attends these review hearings to keep informed. Ordinarily, he does not take an active role because the final letter to the complainant is expected to fully explain why no further action was taken on the complaint.

In the year 2000, the Commissioner took an active role at all review hearings to address a single issue: the role of the provincial judge at the review hearing and the appropriate standard of review that he or she should apply.

The Commissioner involved himself to provide provincial judges with full argument on this very technical issue of administrative law. Prior to the Commissioner's involvement, provincial judges were hearing only one side of the argument—the side that favoured police officers—because counsel typically represented police officers and not complainants. The Commissioner intervened to allow provincial judges to hear a more balanced legal argument.

Legal principles allow a reviewing body to choose from three different standards when reviewing a decision of another body. Depending on the nature of the issue under review, the appropriate standard can be any one of: patent unreasonableness, reasonableness, or correctness. The question is which of these tests must be met before the reviewing body will overturn the other body's decision. Prior to the Commissioner's involvement, police officers had regularly convinced provincial judges that the complainant had to show that the Commissioner's decision was "patently unreasonable" before it could be overturned. However, as a result of the Commissioner's involvement, this is no longer the case.

The most significant decision on this point was delivered by Provincial Judge Chartier on May 30, 2000, in *LERA Complaint No. 3599*. In that decision, it was held that the appropriate standard was not patent unreasonableness but was reasonableness or correctness, depending on the nature of the issue being reviewed.

By intervening to make this argument, the Commissioner recognizes that it may *appear* an argument is being advanced against his office's own self-interest because it means his decisions are subject to a greater level of scrutiny by provincial judges. The Commissioner's view is that it was unfair to complainants that his decisions should continue to be artificially insulated from review, for the sole reason that they were unable to retain counsel to put forward an argument on a very technical legal issue. The best way to ensure the Commissioner's decisions are upheld upon review is not to inappropriately insulate them from review, but rather to make considered decisions that do not warrant being overturned when they are reviewed.

Ultimately, the Commissioner feels strongly that his involvement at these hearings has resulted in better administration of the legislation. Complainants and police officers are now treated more fairly and evenly. The Commissioner takes great satisfaction in this accomplishment.

When the Commissioner declines to take further action on a complaint, the complainant may apply to the Commissioner to have the decision reviewed by a provincial judge. Section 13(2) of *The Law Enforcement Review Act* stipulates that the Commissioner must receive this application within 30 days after notice of the decision has been sent to the complainant.

In 2000, there were five applications by complainants to have the Commissioner's decision reviewed by a provincial judge.

The following is a summary of these applications:

- The complainant was arrested for impaired driving and placed in a police car without handcuffs. When officers asked for the complainant's keys to his vehicle, he denied having them. The complainant was asked to get out of the police car so he could be searched for the keys. When the complainant resisted the search, he was taken down to the ground, handcuffed and searched. The complainant alleged that the officers beat and kicked him and banged his head on the police car.

  When interviewed, the officers strongly denied the complainant's allegations. The medical report found superficial injuries consistent with the officers' version of events, and stated that the complainant had overstated his symptoms.

  The Commissioner declined to take any further action as there was insufficient evidence to justify a public hearing.

  On receipt of the Commissioner's final letter, the complainant requested that a provincial judge review the Commissioner's decision.

The provincial judge upheld the Commissioner's decision and dismissed the complainant's application.

- Police were called to a residence about a fight in progress. When they arrived, the complainant was on his back on the kitchen floor with a rolling pin in his hand while the other combatant was on top of him. One officer grabbed the other combatant while the other officer dealt with the complainant. When she told the complainant several times to drop the rolling pin, he refused. She felt he was about to strike her with the rolling pin so she pepper sprayed him. He then dropped the rolling pin. After the scene was under control, the officers noted that the complainant had blood around his mouth and nose while the other combatant had a bump on his head and a cut on his knuckles. Other officers arrived and noted the same injuries.

  When the complainant made his initial complaint to the Law Enforcement Review Agency, he said he had been attacked by four men and beaten unconscious, and had received two black eyes. He said the police didn't provide him with medical assistance, and did not arrest his assailants. He also claimed the officers would not accept his complaint about cash and a guitar being stolen by the assailants.

After reviewing the LERA investigative report, which included the police report and interview results, the Commissioner declined to take further action because there was insufficient evidence to justify a public hearing.

Upon receipt of the Commissioner's final letter, the complainant applied to have the Commissioner's decision reviewed by a provincial judge.

The provincial judge upheld the Commissioner's decision and dismissed the complainant's application.

- The complainant met with a police officer for a follow-up interview respecting a sexual assault complaint. She alleged that the officer had been discourteous to her by snickering at her when she was trying to give him additional information.

  When interviewed, the officer said that the complainant had not provided any new information, and had expressed her displeasure that no charges were being laid. The officer was willing to speak with the complainant's lawyer and whomever else she wished, but to no avail.

  The Commissioner declined to take any further action because the complaint did not identify any behaviour warranting discipline.

  Upon receipt of the Commissioner's final letter, the complainant applied to have the Commissioner's decision reviewed by a provincial judge.

The provincial judge upheld the Commissioner's decision and dismissed the complainant's application.

- A man heard a horn honking for long time. He went to investigate and found the complainant slumped over the steering wheel of his car. The man and two others attempted to awaken the complainant without success. An ambulance was called and the ambulance attendants found the complainant medically fine. By this time, the police had been called.

  The police removed the complainant from his car, searched him, and found a prohibited weapon on him. He was arrested for care and control of a vehicle while impaired and possession of a prohibited weapon. He was taken to the police station, where a struggle ensued. The complainant claimed the officer grabbed him by the neck, pushed him into a wall and called him a derogatory name. He also claimed he received a cut on the back of his neck and that his neck chain was broken. The officers admitted pushing the complainant against the car to handcuff him. They noticed that the complainant was holding the neck chain in his hand when they handcuffed him. They denied making any derogatory comments.

  The medical report showed superficial lacerations on the face and bruising but no cuts to the neck.

The Commissioner declined to take any further action as there was insufficient evidence to justify a public hearing.

Upon receipt of the Commissioner's final letter, the complainant applied to have the Commissioner's decision reviewed by a provincial judge.

The provincial judge upheld the Commissioner's decision and dismissed the complainant's application.

- The complainant alleged that police were refusing to conduct a criminal investigation into the actions of a provincial department involved in a civil action with him.

  Based on the material provided by the complainant, the Commissioner declined to take further action as the matter was outside the scope of the Law Enforcement Review Agency.

  Upon receipt of the Commissioner's final letter, the complainant applied for a review of the Commissioner's decision by a provincial judge.

At the review hearing, the complainant wanted to have the matter adjourned indefinitely as he was pursing civil and criminal actions. When the provincial judge declined, the complainant withdrew his application for the review.

Public Hearings Before a Provincial Judge

Public hearings under *The Law Enforcement Review Act* are administrative tribunals before provincial judges. In this context, judges exercise powers under the Act as persons designated for this purpose and not as a court.

The following is a summary of hearings held in 2000:

- The complainant was picked up at his residence by two police officers and taken to the police station, where he was turned over to two other officers. The complainant, who is a teacher, initially believed he would be interviewed about a possible assault by one of his students. At the police station, he learned that he was considered a suspect in a serious sexual assault. During questioning he was not allowed to call his lawyer, despite several requests to do so, and one officer was verbally abusive to him.

  Allegation: Oppressive or abusive conduct or language toward the complainant; failure to promptly advise the complainant, upon his arrest, of the reasons therefore; failure to allow the complainant to retain and instruct counsel without delay.

  Disposition: *Prior to commencement of the hearing, a negotiated settlement was reached. As a result, the complainant withdrew his LERA complaint against the officer involved.*

- The complainant had been involved in a dispute with her adult daughter about ownership of household items. When police came to speak with the complainant at her residence, they brought along some of the complainant's possessions, which they had received from the complainant's daughter.

  One officer was verbally abusive to the complainant. At one point, he grabbed her arm and forced her to sit down with such force that she suffered pain, numbness and bruising.

  Allegation: Using unnecessary violence or excessive force; using oppressive or abusive conduct or language towards the complainant.

  Disposition: *At the hearing, the complainant was represented by an advocate. Counsel for the respondent officer objected to the advocate on the grounds of conflict of interest. The judge allowed limited participation by the advocate. After a short recess, the respondent officer returned to the hearing and admitted the defaults. The judge ordered that the penalty be a written reprimand, which was subsequently imposed by the respondent officer's police chief.*

- The complainant went to the police station with her 14-year-old son to file a criminal complaint against several students who had allegedly assaulted her son at school that day. During the interview, the complainant was describing what had happened to her son when the officer bluntly told her to shut up because he was not talking to her. The complainant was shocked and embarrassed by this treatment from the officer in front of her son.

  Allegation: Abuse of authority by being discourteous or uncivil toward the complainant.

  Disposition: *At the hearing, neither the complainant nor the officer was represented by counsel. Both the complainant and her son gave evidence to the effect that the officer did raise his voice and tell the complainant to shut up. The respondent officer testified that he had not been angry with the complainant and denied telling her to shut up. The presiding judge made specific comment respecting the testimony of the complainant's son and therefore found the respondent officer guilty of the alleged default. The matter was adjourned to a later date to assess the penalty to be imposed.*

- The complainant and his business partner had parted company. The former business partner came to the office of the complainant to collect documents. He was accompanied by two police officers. The complainant felt the officers actively involved themselves in a civil dispute by acting on behalf of the former business partner when the latter removed items from the office.

  Allegation: Abuse of authority by becoming involved in a civil dispute between the complainant and his former business partner, and abuse of authority by being discourteous and uncivil toward the complainant.

  Disposition: *At the hearing, a significant issue was raised concerning Section 29(a) of* The Law Enforcement Review Act. *This issue dealt with whether the offences listed in the section were illustrative of the types of abuse of authority or whether these offences were inclusive only. Counsel for the respondent officers argued that, since the section did not list becoming involved in a civil dispute as an offence, the court had no jurisdiction to hear or deal with the matter. On the other hand, counsel for the Commissioner argued that the term "including" which preceded the sub clauses of Section 29 allowed for an offence not specifically identified in the sub clauses to be described in such terms that were answerable by a respondent officer. The judge accepted the latter argument and allowed the hearing to proceed on the first allegation.*

  When the evidence was presented, the judge accepted the officers' evidence that they were at the complainant's place of business simply to prevent a breach of the peace. He also ruled that they were not otherwise involved in the civil dispute. The judge also accepted the evidence of the officers and the complainant's ex-business partner that the officers were not discourteous and uncivil to the complainant.

  The judge dismissed both allegations of disciplinary default against the officers.

- Two police officers arrived at a residence shortly after midnight to arrest the complainant on charges of assault and uttering threats against his ex-wife. The complainant was wearing pants, a belt with a knife in a sheath attached to it, and no shoes or shirt. When the complainant refused to accompany the police, a struggle ensured, resulting in glass objects being broken. The complainant's hair was pulled, he was pepper-sprayed twice, and he received bumps, bruises and cuts from the broken glass. The complainant alleged the officers told him to quit crying or they would roll him in the snow.

  Allegation: Abuse of authority by using excessive force or unnecessary violence on the complainant; using oppressive or abusive conduct or language towards the complainant.

  Disposition*: During the hearing, the judge determined that the officers acted lawfully and reasonably in the use of force to control the resisting complainant. Since the complainant was not wearing a shirt, grabbing his hair was necessary to control him so he could be pepper-sprayed. The judge also ruled that the pepper-spraying was not unreasonable violence or excessive force, under the circumstances.*

  Respecting the alleged comment about rolling the complainant in the snow, the judge disbelieved this comment happened.

  The judge dismissed the allegations against the officers.

Standard of Proof

Section 27(2) of *The Law Enforcement Review Act* states: "The provincial judge hearing the matter shall dismiss a complaint in respect of an alleged disciplinary default unless he or she is satisfied on clear and convincing evidence that the respondent has committed the disciplinary default".

This differs from the criminal standard of "beyond reasonable doubt" and the civil standard of "balance of probabilities."

However, in two recent cases, the provincial judges have ruled that, since LERA hearings are, in fact, civil proceedings, the standard of proof was "balance of probabilities" and not "clear and convincing evidence."

The provincial judges also ruled that "clear and convincing evidence" simply speaks to the quality of evidence necessary to meet the standard of proof on "balance of probabilities."

Court of Queen's Bench Matters

In 2000, LERA continued to be involved in two matters that had begun in the Court of Queen's Bench in 1999:

- In *Blair* v. *Soltys*, a complaint was made against a member of the Brandon Police Service. The Commissioner conducted an investigation. Ultimately, the matter was referred to a provincial judge for a hearing on the merits of the complaint. However, on the date of the hearing, counsel for the member advised the provincial judge that he had resigned from the Brandon Police Service. He argued that, in light of this fact, the provincial judge had lost jurisdiction to continue with the hearing. The Commissioner recognized that the outcome of this issue would have an impact on his office's ability to administer its own responsibilities. He therefore intervened and argued that the provincial judge had not lost jurisdiction.

  The provincial judge concluded that, despite the resignation, he continued to have jurisdiction to conduct the hearing. The former member appealed to the Queen's Bench but his appeal was unsuccessful. In their reasons, provincial judge Giesbrecht and Queen's Bench Justice Mykle both observed that the scope and purpose of the Act is wider than a simple disciplinary vehicle, given the special nature of police officers in society, which is exemplified by their special powers such as the power of arrest. Though it was recognized that the individual police officer's perspective is that the Act is purely disciplinary in nature, it was explained that the Act also has a much broader public purpose designed to promote both respect for the police and respect for the individual.

  While this matter is currently under appeal to the Court of Appeal, it appears that the member is not actively pursuing the appeal and will instead proceed to the hearing.

- In *Kennedy* v. *Manitoba (LERA)*, a complaint was made against two members of the Winnipeg Police Service. The Commissioner conducted an investigation. Ultimately, the matter was referred to a provincial judge for a hearing on the merits of the complaint. Before the hearing began, the officers filed an application in Queen's Bench, seeking to prevent the hearing from taking place. It was argued that the Commissioner had committed procedural errors that resulted in a loss of jurisdiction to refer the matter to a hearing on the merits.

  The Commissioner took an active role at the hearing in Queen's Bench, arguing that it was premature to be raising these issues in the Queen's Bench when they should have been raised first before the provincial judge. (The Commissioner is not taking an active role in relation to the question of whether procedural errors were committed or, if there were errors, whether they resulted in a loss of jurisdiction.)

  The Queen's Bench held that as a general rule, issues of this nature should be raised first before the provincial judge. In this particular instance, Justice Beard ordered that there were exceptional circumstances that required the matter to be dealt with in Queen's Bench.

  The Judge set this matter over to be heard in 2001.

Canadian Association for Civilian Oversight of Law Enforcement (CACOLE)

LERA is a member agency of CACOLE and represented by the Commissioner who is a member of the Board of Directors.

CACOLE'S Mission Statement is:

> To advance the concept, principles and application of civilian oversight of law enforcement in Canada at local, provincial, national and international levels.

CACOLE's 6th annual conference was held in Winnipeg on September 20-23, 2000. The conference theme of "Affecting Police Conduct" attracted an impressive list of moderators, speakers, and 100 delegates from Canada, Ireland, and the United States.

The Honourable Gord Mackintosh, Minister of Justice and Attorney General of Manitoba, who was introduced by the Commissioner, delivered opening remarks.

A summary of the Minister's comments in CACOLE'S Communiqué newsletter Vol. Four No. One February 2001 written by Pam Little, Administrative Assistant, Nova Scotia Police Commission follows:

> *"CACOLE was privileged to have the Honourable Gord Mackintosh, Attorney General of Manitoba, open the conference in Winnipeg last September. Mr. Mackintosh's address was not only encouraging to those of us who work directly with civilian oversight in Canada, but his comments communicated his understanding of the benefits oversight has for the public and the police. He reminded all of us of the important role oversight bodies provide by assuring "an unbiased and judicious setting in which complaints can be registered, investigated and resolved or adjudicated."*
>
> *Mr. Mackintosh welcomed everyone present and noted that the conference had attracted numerous jurisdictions across Canada. He commented on his interest in civilian oversight of law enforcement, and that oversight "needs to be the topic of continuing discussions for law enforcement professionals, the public and your organizations alike."*
>
> *Mr. Mackintosh reviewed some details of the Manitoba system, (Law Enforcement Review Agency – LERA), and was pleased to report that their ability to deal with complaints quickly has improved tremendously. He stated that the*

Manitoba government has shown commitment to civilian oversight by providing additional resources to help LERA fulfill its mandate. Staff increases have permitted LERA to eliminate a backlog of files dating back to 1995, and to improve the average time, from complaint to resolution, to decrease significantly. LERA has also been able to increase the number of informal resolutions (In 1999, 12% of complaints to LERA were handled this way).

Mr. Mackintosh stated that informal resolutions provide "a truly transparent and fair process for both complainant and officers." Mr. Mackintosh opined that police officers, as professionals, realize that they are accountable and have an obligation to respond to critics as well as to supporters. "Civilian oversight is first and foremost about professionalism, but it is also about public perception. The oversight function is designed to enhance both. More and more, police officers are realizing that civilian oversight is in their best interest." He stated that he has received reports from LERA's Commissioner (Mr. George Wright) that LERA has received excellent co-operation from the entire Manitoba Police community, executives and police associations.

Mr. Mackintosh spoke about the rapid changes in the society we live in and how our expectations about how we will be treated is changing too. "People in our society are now more likely to demand accountability from the police when something does go wrong."

He further stated he believes civilian oversight of law enforcement will play an increasingly important role in the justice system. One area of concern for Mr. Mackintosh within Manitoba is that police still remain responsible for investigating their own. When an officer is accused of breaking the law, the burden of investigating the case falls to his or her own police service.

Mr. Mackintosh announced during the conference that his department is currently embarking on a process of consultation and discussion about ways to handle sensitive matters involving criminal investigations. He has directed his department to consult, and work with police services, to consider a variety of models that would encourage police organizations to make use of other ways to handle complaints of criminal conduct of police officers.

Mr. Mackintosh further announced that from now on whenever the Commissioner of LERA completes an investigation, and feels that it should be reviewed to determine if criminal charges should be laid, that legal opinion will be provided by an independent prosecutor, in every case. "Justice must be done – and the public must see it done. Public confidence in the justice system is critical. We need to know that, when we call the police for help, we will receive help. When a police officer breaks the law, we need to have 'confidence' that the matter has been fully investigated. The public wants the police to be subject to the same laws they are."

Mr. Mackintosh further stated that it is due to police services, and organizations such as those represented at these types of conferences that has built public confidence over the years. In concluding his address Mr. Mackintosh applauded CACOLE as an organization that will continue to serve as a useful forum in the deliberations that lie before us."

Manitoba Participants included:

Ron Perozzo, Executive Director, Aboriginal Justice Implementation Commission, participated in a panel discussion "Affecting Police Conduct Through Commissions of Inquiry."

George Wright, LERA Commissioner, moderated a panel discussion on the theme "Affecting Police Conduct through Forensic Sciences."

Robert Morrison, Q.C., General Counsel, Prosecutions Branch, Department of Justice, participated in a panel discussion on "Affecting Police Through Ethics and Training."

The following participated in a panel discussion "The Role of the Media in Affecting Police Conduct".

Sergeant Carl Shier, President, Winnipeg Police Association
Wyman Sangster, President, Sangcorp Consulting Ltd., Stonewall, Manitoba
Gordon Sinclair Jr., Columnist, Winnipeg Free Press

LERA as an Agency

The Law Enforcement Review Agency is an agency of the Manitoba Department of Justice, Public Safety Branch. LERA's address is:

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Email: lera@gov.mb.ca

Web site: www.gov.mb.ca/justice/lera

George V. Wright was appointed Commissioner in February 1998.

Wyman Sangster, Director of the Public Safety Branch, Manitoba Justice, provided administrative support.

Ben Thiessen, Acting Director of the Public Safety Branch, Manitoba Justice, also provided administrative support.

Robert M. Tramley and Robert Brakefield-Moore provided investigative support at various times during the year.

Jim Haslam and Bridgette Poitras were retained as full time employees in 2000.

Lorraine De Baets is registrar and administrative assistant. During her absence, Louisa Newlands and then Lynne Sabourin acted as registrar and administrative assistant.

Denis G. Guénette, Crown Counsel, Civil Legal Services, Manitoba Justice, provides legal services to LERA.

Eileen O'Donnell, Communications Co-ordinator, Information Resources Division, Manitoba Culture, Heritage and Tourism, provides media relations support.

Candace Reinsch, Administration and Finance, Manitoba Justice, provides website support.

Data Analysis

The number of public complaints received in 2000 dropped slightly compared to 1999.

The number of outstanding investigations being carried forward increased significantly.

Two factors contributed to this increase:

- Except for the Commissioner, there was a complete change of staff in LERA. New employees were hired in 2000 as a result of authorization to fill positions with permanent full-time personnel. This resulted in downtime to accommodate orientation of these new employees.

- Winnipeg Police Service Professional Standards Unit was not able to provide requested particulars as quickly as before. This unit had a high number of other investigations not related to LERA that taxed their resources.

The percentage of complaints resolved at intake, or after preliminary investigation, increased slightly while the percentage requiring full investigation decreased slightly. It is believed the reason for this is quicker contact with complainants to explain the need to complete complaint forms within the 30-day time limit to comply with *The Law Enforcement Review Act.*

The number of complaints alleging abuse of authority has decreased from last year yet still reflects concerns by complainants about such things as unlawful searches or arrests under the spousal assault policy.

The number of complaints resolved informally has remained statistically similar to last year.

Frivolous complaints continued to decrease.

There was also a statistical increase in complaints abandoned or withdrawn by complainants after investigation results were made known to them. The cause is believed to be increased efforts to have closer contact with complainants during the investigation stage.

Related to the reasons mentioned, the average length of time to complete investigations on files closed in 2000 increased slightly to 11 months.

The number of LERA complaints in which the complainant has also filed a criminal complaint with police has doubled this year. If it is determined that a criminal offence may have been committed, it is explained to the complainants that they can also file a criminal complaint with the police service, or LERA can forward the matter through the Attorney General. In most instances, the complainant files the criminal complaint directly. This effectively delays any LERA investigation until the criminal matter has been resolved.

Acknowledgements

- Members of the public who make their complaints and concerns known to LERA.
- Complainants and respondents who are able to resolve their differences by way of informal resolution.
- The continued support and co-operation of the many stakeholders involved in the LERA process.
- The chiefs of police of Manitoba's municipal police services.
- The police associations and members of Manitoba's municipal police services.
- Legal counsel for complainants and respondents.
- Department officials who have contributed their expertise in making LERA a more effective and efficient agency.
- The staff of LERA, whose competence and commitment is vital to LERA's success as a civilian oversight agency.
- Larry Yeske and Camille Alexander for compiling this report.

Activities

Activities

During the year, the Commissioner:

Met with The Honourable Gord Mackintosh, Minister of Justice & Attorney General.

Maintained contact through meetings and discussions, with Police Chiefs and Police Associations.

Attended the University of Winnipeg, Bonnycastle Lecture 2000 on Police Accountability & Civilian Control presented by Chief Christine Silverberg, Calgary Police Service.

Attended the Canadian Association for Civilian Oversight of Law Enforcement conference in Winnipeg on September 20-23rd,2000.

Met with investigator(s) from the office of Ombudsman Manitoba.

Made presentations to Winnipeg and Brandon Police Service recruit training classes, assisted by LERA investigator's Jim Haslam and Bridgette Poitras.

Attended graduation ceremonies for Winnipeg Police Service recruit class #130 and Brandon Police Service recruit class 2000-01.

Assisted the Manitoba Human Rights Commission in a presentation at the International Centre titled "How does the Law Protect Me".

Met with Winnipeg city councillor Jenny Gerbasi, Chairperson, Standing Policy Committee on Protection & Community Services.

Met with Aboriginal Law Centre Lawyer Lionel Chartrand.

Attended the Manitoba Criminal Justice Association crime prevention breakfast.

OVERVIEW

The year 2000 was a turning point for the Law Enforcement Review Agency. With budgetary approval, the permanent appointment of Lorraine DeBates as registrar, Bridgette Poitras and Jim Haslam as investigators was completed.

This annual report has been expanded to include reviews by a provincial judge of the Commissioner's decision to take no further action, public hearings before a provincial judge and comment regarding the standard of proof required by The Law Enforcement Review Act.

LERA's website was launched and inquiries have been received from the international community.

The successful hosting of the national conference for the Canadian Association for Civilian Oversight of Law Enforcement was a highlight and major event for LERA during the year.

With the appointment of permanent staff and continued support from government and stakeholders, LERA's mission of delivering a judicious, timely, impartial, client-oriented service to the public and to the police services and police officers within its jurisdiction is achievable.